

## REMARKS

The present amendment is submitted in response to the Office Action dated March 4, 2009, which set a three-month period for response, making this amendment due by June 4, 2009.

Claims 1-2, 5, 9-11, 13-16, and 18-26 are pending in this application.

In the Office Action, claim 13 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Claims 1-2, 4, 7, 9-11, 13, 16, and 18-20 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 7,076,838 to Meixner ("Meixner '838") in view of U.S. Patent No. 4,576,21 to Emonet. Claims 5, 14-15, and 21-22 were rejected under 35 U.S.C. 103(a) as being unpatentable over Meixner in view of Emonet and further in view of U.S. Patent No. 707,803 to Smith. Claim 6 was rejected under 35 U.S.C. 103(a) as being unpatentable over Meixner in view of Emonet and further in view of GB 2171045A to Weber.

In the present amendment, claims 1 and 13 were amended to address the rejection under Section 112, second paragraph, and to define the invention more clearly over the newly cited combination of references.

With regard to the amendment of claim 13, the force-transmission elements (20, 22) have a cross-over point or a point of intersection which is marked by a connecting element (24) (see figures 2 to 4 of the patent application). The scope of claim 13 can be adopted to each of the force-transmission elements (20, 22), but will be explained for clarity only for one of the force-transmission elements, specifically, for force-transmission element 20. The force-transmission element (20) is divided through the

cross-over point into two parts, one extending from a bolt (44) to the cross-over point (24) and the other extending from the cross-over point (24) to a bolt (50). Both parts have a length (from bolt (44) to the cross-over point and from the cross-over point to bolt (50)) which is longer than a width of one of the force-transmission elements when viewed from the cross-over point (24) and in a longitudinal direction of the same force-transmission element (20), wherein a width is an extension of the force-transmission element (20) which is perpendicular in respect to the length of the force-transmission element (20) in the longitudinal direction of the force-transmission element (20). The features of claim 13 can clearly be seen in Figs. 2 to 4.

Claim 1 has been amended to add the features of claims 4, 6, and 7, all of which were canceled.

In addition, new claims 23-26 have been added. The features of new claims 23, 24 and 26 are shown in the figures. The features of new claim 25 were originally recited in claims 1, 4, 6 and 21.

With regard to the rejection of claim 1, Meixner discloses a handle device (3) for a hand-held power tool with a vibration-shielding unit. The vibration-shielding unit includes pairs of force-transmission elements (19 and 21, 41 and 45 and 43 and 47) which are connected to each other at one of their ends (see Meixner, figures).

Meixner teaches to connect two force-transmission elements (19 and 21, 41 and 45 and 43 and 47) at one end to each other. Therefore, this reference lacks the feature recited in claim 1 that the force-transmission elements are intended to perform a scissors-type motion.

One skilled in the art would be provided with no motivation which would have led him to the subject matter the amended claim 1 through a combination of the Meixner reference with the patent to Emonet.

Emonet discloses a tool assembly or cement breaker hammer (1) with two control handles (3, 4). The handles (3, 4) are connected to levers (6, 7) that cross over each other. These levers (6, 7) are fixed to a head (2) via pivot pins (8, 9) (see Emonet, column 2, lines 17 to 30 and figures 1 to 3). Although the levers (6, 7) of the device of the Emonet reference cross over each other, they do not perform a scissors-type motion.

To perform a scissors-type motion the crossing elements (the levers (6, 7) of Emonet or the force-transmission elements 20 and 22 of the patent application) have to be fixedly connected to each other through a connection element (see connecting element 24 of the patent application) at their crossing point. Hence, during a motion of the crossing elements in respect to each other this crossing point is not changed or it is fixed. In consequence, another parameter has to be varied. Thus, a distance between an end (e.g. bolt 48) of one of the crossing elements (transmission element 22) and an end (e. g. bolt 50) of the other connection element (transmission element 20) is varied during the scissors-type motion. Therefore, these ends have to be displaceable in a direction extending perpendicular to the direction of motion.

In addition, the scissors-type motion is only operable when the ends (e.g., bolt 48 and 50) between which the distance is varied and which were displaceable in a direction extending perpendicular to the direction of motion are located at parts (e.g. handle 16

and main body 18 of the patent application) of the device which were movable in the direction of motion in respect towards each other.

The Applicants therefore submit that the device in Emonet does not perform a scissors-type motion, because first, the levers (6, 7) are not connected to each other, especially not at their crossing or intersection point (C). In contrast, their crossing point (C) is varied during operation, which could be seen in the provided explanatory figure, which shows an orientation of the levers 6' and 7' in respect to each other after a movement (arrows 10 and 11) of the handles (3, 4) in the direction of motion (M). The "original" crossing point (C1) is displaced about distance (D) to a new crossing point (C2). Even if they were connected, what would be however against the teaching of the Emonet reference (see Emonet, column 3, line 14), the mechanism of the hammer (1) of the Emonet reference would not work, because this would result in the necessity of ends, especially at the connecting points of the levers (6, 7) with the head (2), which were displaceable in a direction extending perpendicular to the direction of motion (M). But the device of Emonet purposefully teaches to mount the levers (6, 7) pivotally in pivot pins (8, 9) to suppress frictions (see Emonet, column 2, lines 59 and 60).

Second and as already stated above, the levers (6, 7) are not supported in one end or in their ends such that they are displaceable in a direction extending perpendicular to the direction of motion (M). Rather, the handle ends are only displaceable in the direction of motion (arrows 10, 11). Hence, the Emonet reference discloses no scissors-type motion as claimed in amended claim 1 and thus someone skilled in the art would not be provided with any teaching or suggestion which would

have led him at the time of the invention to the subject matter of amended claim 1.

Therefore, claim 1 is not obvious a combination of the Meixner and Emonet references.

Regarding the combination of Meixner and Smith, as argued in the last amendment, the cited patent to Smith discloses a clamp with a guide device for guiding a clamping motion of the clamp and which is composed of two levers (5, 6) crossing over each other (Smith, Figs. 1 and 2). Although Smith teaches a guide device with two crossing levers, the practitioner could not be led to the subject matter of claim 1, because Smith and the subject matter of claim 1 relate to different technical fields. The guide device taught in Smith is provided for guiding a clamping motion so that the two halves of the clamp move together equally. In contrast, claim 1 as amended relates to a rotary hammer with a main body with an impact mechanism which generates axial impact impulses on a tool and with a handle that is connected to the main body via a vibration-shielding unit.

The Smith device concerns a clamping device and is in no way related to the ***relative displacement of two housing parts***. Precisely for this reason, the practitioner skilled in the art would not consider the disclosure of Smith as a relevant reference in the field of the construction of rotary hammers, especially in view of the fact that the forces acting by the vibration shielding of a rotary hammer differ dramatically from the typical forces that occur in the manipulation of a clamping device

The device taught in Smith is an ***adjusting device*** for adjusting the distance between two clamp elements (14, 15) and is not adapted to absorb vibrations, that is, to react rapidly to the violent force acting on one of the clamp elements (14, 15). This is clear to one skilled in the art, since Smith lacks the feature of a return element which is

the central elements of a vibration-shielding unit. For a precise adjustment of the distance between the two clamp elements in Smith, the connection between the clamps via the levers (5, 6) must be a rigid connection. Based on this fact, it is clear that the teachings of Smith are not adapted to the field of a vibration-shielding unit which requires a non-rigid connection between two movable parts such that a transmission of vibrations of one part to the other part can be avoided.

The Applicants therefore respectfully submit that it would not be obvious to one skilled in the art of rotary hammers, seeking to improve the vibration-shielding unit taught in Meixner, to consider the Smith reference as a relevant reference, since Smith is in no way related to the construction of a vibration-shielding unit.

Moreover, Weber discloses a hand-held power tool handle device with two levers (15) connected together at their ends to couple a housing (11) and a handle (12) of the power tool. In addition, compression springs (14) are mounted in reception bores (12a) of the handle (12).

Weber also lacks the feature that force-transmission elements are intended to perform a scissors-type motion.

Therefore, claim 1 is patentable over the cited combination of references. None of the cited references to Meixner, Emonet, Weber or Smith nor a combination of these prior art documents suggest the matter of the amended claim 1.

Since no cited prior art document discloses or teaches a scissors-type motion, new claim 25 is patentable over Meixner, Emonet, Weber or Smith or any combination of these documents.

In addition, even since the Weber reference discloses that two levers (15) are supported in one end in a bolt such that they are displaceable in a direction extending perpendicular to a direction of motion and that the bolts are displaceably engaged in slots, someone skilled in the art would not get the motivation to combine these features with the features of the Meixner '838 or the Emonet reference.

Also a combination of the Meixner reference with the Weber reference would not lead one skilled in the art to the subject matter of claim 25, especially since, as stated above, none of these references teach a scissors-type motion.

Emonet teaches to construct or form, respectively, each handle (3, 4) separately from the other handle (3, 4) (see Emonet, claim 1 or column 3, line 14 as well as Figs. 2 and 3). Thus, each handle (3, 4) can be manipulated separately. Thus, a connection of the levers (6, 7) is not intended and hence a scissors-type motion is not possible. Moreover, to construct the mounting (pins 8, 9) of the levers (6, 7) displaceably in slots as taught by the Weber reference is against the teachings and advantages of the Emonet reference (see Emonet, column 2, lines 59 and 60).


Thus, the practitioner skilled in the art would not combine the teachings of the Emonet and the Weber reference and thus would not have gotten any motivation which would have led him to the inventive idea of new claim 25.

It is respectfully submitted that since the prior art does not suggest the desirability of the claimed invention, such art cannot establish a prima facie case of obviousness as clearly set forth in MPEP section 2143.01. Please note also that the modification proposed by the Examiner would change the principle of operation of the prior art, so that also for this reason the references are not sufficient to render the

claims prima facie obvious (see the last paragraph of the aforementioned MPEP section 2143.01).

The application in its amended state is believed to be in condition for allowance. Action to this end is courteously solicited. However, should the Examiner have any further comments or suggestions, the undersigned would very much welcome a telephone call in order to discuss appropriate claim language that will place the application into condition for allowance.

Respectfully submitted,



Michael J. Striker  
Attorney for Applicant(s)  
Reg. No. 27233  
103 East Neck Road  
Huntington, New York 11743  
631-549-4700